

ADVISORY OPINION

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SUBSTITUTION OF STATE EQUIPMENT FOR PERSONAL EQUIPMENT

QUESTION:

If an agency substitutes a state officer's or employee's personal computer equipment with state equipment so that the officer or employee can work at home, may the officer or employee make the same private use of the replacement state equipment that he or she could make of his or her personal equipment?

SHORT ANSWERS:

Yes. RCW 42.52.160 and WAC 292-110-010 limit the private use of state computer equipment and prohibit private use of such equipment to access computer networks and other electronic data bases. However, if an agency, for a legitimate agency purpose, substitutes state equipment for an officer's or employee's personal equipment, the officer or employee may use the state equipment on the same basis that he or she could use his or her personal equipment.

ANALYSIS

The Board has considered a proposed agency policy governing the placement of state computer equipment in the homes of state officers and employees. The purpose of the policy is to allow officers and employees to work at home or to telecommute. In some cases, the officers or employees would use their own computer equipment, but some of the equipment may not be compatible with the agency system. To make it compatible, the agency proposes to replace a part of the officers' or employees' equipment with state equipment. For example, the officers or employees may have modems in their computers that would allow access to the Internet; however, the modems are incompatible with the agency system. Rather than provide the officers or employees with a whole new computer system, the agency proposes to solve this problem by replacing the officers' or employees' modems with state modems that would be compatible. The question is whether the officers or employees can make the same private use of the state modem that they could make of their personal modem.

The private use of state computer equipment is governed by RCW 42.52.160 and WAC 292-110-010. The rule permits private use of state computer equipment under limited circumstances. WAC 292-110-010(5)(b) provides that officers and employees can make the same use of equipment at home as is permitted at the office, if the agency has authorized the officer or employee to take to equipment home to perform state business. Although some private use of state computer equipment is permitted, WAC 292-110-010(5)(d) prohibits private use of state computer equipment to access computer networks including electronic mail and electronic bulletin boards.

This prohibition applies to state computer equipment located at the office or at home. Thus, it is clear that if an agency provides officers and employees with computer systems and modems so that they may telecommute, the officers or employees may not make private use the computers and modems to search the Internet—either at home or at work.

However, the proposed agency policy addresses a slightly different issue—substituting state equipment, such as a modem, for personal computer equipment. The agency is considering substituting some parts of an officer's or employee's personal system because it would be less expensive than providing the officer or employee with a whole new computer system. The problem is that officers or employees may not agree to the substitution if it eliminates their ability to make private use of their personal computer. For example, officers and employees may obviously make private use their personal computers and modems to search the Internet. If they may not make similar use of a state modem, they would likely not give up their personal modem.

Officers and employees who have personal computers are clearly entitled to make private use of them. The Board does not believe that such permissible private use should be prohibited because the officers or employees agree to substitute some of their equipment with state equipment to allow an agency to accomplish a legitimate agency purpose, such as telecommuting, in a way that achieves a cost savings for the state. In such circumstances, officers and employees may make private use of state computer equipment that substitutes for their own equipment, so long as the state is not paying the cost of the private use. Thus, officers and employees could use the state modem to access the Internet, but the cost of such access must be borne by the officers and employees.

We emphasize that this exception is limited to the substitution of state equipment for personal equipment. As we noted at the outset, if an officer or employee does not have a home computer and the agency provides one for agency business, the officer or employee may only make private use of the home computer on the same basis as a computer located at the office. Also, to take advantage of this exception, agencies must adopt policies to ensure that there is no improper private use of state computer equipment.